

IT IS SO ORDERED.

Dated: August 13, 2007
01:14:15 PM


Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

RANDALL J. HAKE and
MARY ANN HAKE,

Debtors.

BUCKEYE RETIREMENT CO., LLC.,
LTD.,

Plaintiff,

vs.

RANDALL J. HAKE and
MARY ANN HAKE,

Defendants.

CASE NUMBER 04-41352

ADVERSARY NUMBER 06-04153

CHAPTER 7

HONORABLE KAY WOODS

ORDER DENYING JURY DEMAND

For the reasons set forth below, this Court finds that Plaintiff Buckeye Retirement Co., LLC, Ltd. ("Buckeye") does not have a right to a jury trial in this adversary proceeding and hereby strikes the jury demand.

I. PROCEDURAL BACKGROUND

On August 21, 2006, Buckeye commenced this adversary proceeding by filing Complaint Objecting to Discharge ("Complaint") (Doc. # 1), which objects to Debtors/Defendants Randall J. Hake and Mary Ann Hake ("Debtors") receiving a discharge in their chapter 7 bankruptcy case. Because FED. R. CIV. P. 38, incorporated into this proceeding by FED. R. BANKR. P. 9015, provides that a jury demand must be made "not later than 10 days after the service of the last pleading directed to the issue," the time for any party to make a jury demand in connection with the Complaint has long passed. FED. R. CIV. P. 38(b) (West 2004). Accordingly, Buckeye and Debtors have waived any right to assert a trial by jury with respect to all allegations and causes of action in the Complaint. FED. R. CIV. P. 38(d).

On March 15, 2007, Debtors, with leave of the Court, filed Amended Counterclaim Seeking Declaratory Judgment ("Amended Counterclaim") (Doc. # 52), which seeks declaratory judgment that certain items listed by Buckeye in paragraphs 5 and 6 of the Complaint are not and were not property of Debtors' bankruptcy estate. The items Debtors define as the Disputed Interests consist of certain interests not listed on Debtors' schedules, which omission Buckeye claims constitutes fraudulent concealment. Buckeye moved to dismiss the original counterclaim, which motion was denied. On April 4, 2007, Buckeye filed Plaintiff's Motion to Dismiss Defendants' Amended Counterclaim ("Motion to Dismiss") (Doc. # 62), which was denied by the Court by Memorandum Opinion and Order dated July 11, 2007 (Doc. ## 106 and 107). Thereafter, on July 23 2007, Buckeye filed Answer and Affirmative Defenses to

Defendants' Amended Counterclaim Seeking Declaratory Judgment ("Answer") (Doc. # 112), to which was appended a Jury Demand. Since the parties have waived any right to demand a jury trial on the Complaint, Buckeye's Jury Demand, of necessity, can relate on to Debtors' declaratory judgment action.

II. DETERMINATION OF RIGHT TO JURY TRIAL

The Court issued Adversary Case Management Initial Order ("Case Management Order") (Doc. # 3) in this case on August 22, 2007. Section 8 of the Case Management Order states that "[i]n any adversary proceeding where a jury demand is made, the Court will make an initial determination as to whether the case constitutes a core proceeding and whether there is a basis for the Court to conclude that the right to a jury trial does or may exist." (Case Management Order at 8.)

A. Core Proceeding

In compliance with the requirements in the Case Management Order,¹ this Court determines that the case constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A),(E),(J)and (O).

B. Right to Jury Trial

1. Declaratory Judgment Actions

The Court will first address whether a party is entitled to a jury trial in a declaratory judgment action. Congress enacted the

¹ Debtors filed Motion to Strike Jury Demand on August 8, 2007 at 5:08 p.m. (Doc. # 119), shortly before the scheduled Final Pretrial in this matter at which the Court addressed the jury demand. This Court addressed the jury demand pursuant to the terms of the Case Management Order rather than the Motion to Strike Jury Demand. Because of this Court's findings and ruling in this Order, the Motion to Strike Jury Demand is moot.

Declaratory Judgment Act, which can be found at 28 U.S.C. § 2201.

Section 2201 states in pertinent part:

In a case of actual controversy within its jurisdiction . . . *any court of the United States . . . may declare* the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201 (West 2004)(emphasis added).

The Declaratory Judgment Act explicitly provides that a Court declares the right of the parties - not a jury. Where one party seeks a declaratory judgment against another party who has a right to a jury trial, courts have held that a declaratory judgment action does not eliminate a jury trial entitlement. Only under the rarest of circumstances can a right to jury trial of legal issues be lost through prior determination of equitable claims. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959); *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996).

However, case law is clear that declaratory judgments are issues for the court - not a jury - to decide. See *Aetna Casualty & Surety Co. V. Quarles*, 92 F.2d. 321, 324 (4th Cir. 1937) ("And the rule is well settled under the English statute and court rules that the granting of declaratory relief is a matter resting in the court's discretion").² As a consequence, Debtors' declaratory judgment action does not endow the parties with a right to a jury

1. The court in *Aetna* affirmed the district court's dismissal of a declaratory judgment on the basis that the moving party already acted upon its rights in another proceeding.

trial, but neither does it abrogate any existing right to a jury trial that might be impaired by granting the declaratory judgment.

2. No right to Jury Trial in Objection to Discharge Cases

In the instant case there is no pre-existing right to a jury trial because cases have uniformly held that there is no jury right in proceedings involving objections to discharge. See *Schieber v. Hooper (In re Hooper)*, 112 B.R. 1009, 1012 (B.A.P. 9th Cir. 1990) ("To the contrary, a bankruptcy discharge and questions concerning the dischargeability of certain debts, involve issues with an equitable history and for which there was no entitlement to a jury trial in the courts of England prior to the merger of law and equity. See Countryman, *The New Dischargeability Law*, 45 Am. Bankr. L.J. 36-39 (1971).")

The United States Supreme Court and various circuit courts have held that proceedings based on the Bankruptcy Code do not encompass a right to a jury trial. In *Granfinanciera, S.A. v. Nordenberg*, 492 U.S. 33 (1989), the Supreme Court held that the Seventh Amendment confers a right to jury trial when a defendant in a fraudulent conveyance action had not submitted to jurisdiction of the bankruptcy court by submitting a claim, but not when the converse was true. The Court based its decision on the "bankruptcy court's having 'actual or constructive possession' of the bankruptcy estate." *Id.* at 57 (citation omitted). See *Katchen v. Landy*, 382 U.S. 323 (1966)(issues involving claims - including preference actions - do not give rise to the right to a jury trial.); *In re Hooper*, 112 B.R. 1009 (9th Cir. BAP 1990) (objection to discharge and dischargeability complaints do not give rise to jury trials.).

Courts utilize a three part test to determine if a litigant is entitled to a jury trial. *Keck, Mahin & Cate v. Bowytz (In re Keck, Mahin & Cate)*, 2001 U.S. Dist. LEXIS 3409, (N.D. Ill. 2001); *Granfinanciera, S.A.*, 492 U.S. 33. These factors are: (i) whether the action could have been brought in the courts of England prior to the merger of the courts of law and equity; (ii) whether the remedy sought is legal or equitable; and (iii) whether the cause of action involves a matter of private or public right. *Granfinanciera*, 492 U.S. at 42 and 53. The instant case fails this test.

Regarding the first element, the Sixth Circuit has ruled that actions objecting to discharge do not invoke a jury trial right. In *Longo v. McLaren (In re McLaren)*, 3 F.3d 958 (6th Cir. 1993) the court stated:

Two independent lines of reasoning support this conclusion. First, application of the two-part test set forth in *Granfinanciera v. Nordberg*, [492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989)], reveals that a dischargeability proceeding is a type of equitable claim for which a party cannot obtain a jury trial. Dischargeability proceedings, like actions to recover preferential or fraudulent transfers, are core proceedings. See 28 U.S.C. § 157(b)(2)(I) and (J) (1988). However, dischargeability proceedings are unlike actions to recover preferential transfers in that historically they have been equitable actions tried without juries: [A] bankruptcy discharge and questions concerning the dischargeability of certain debts, involve issues with an equitable history and for which there was no entitlement to a jury trial in the courts of England prior to the merger of law and equity. *In re Hooper*, 112 B.R. 1009, 1012 (Bankr. 9th Cir.1990); *In re Johnson*, 110 B.R. 433, 434 ([Bankr.] W.D. Mo. 1990); *In re Brown*, 103 B.R. 734 ([Bankr.] W.D. Md. 1989). The relief sought is also equitable since the essence of a dischargeability claim is a declaration that

the debt is indeed dischargeable or nondischargeable.

Id. at 960 (quoting *N.I.S. Corp. v. Hallahan (In re Hallahan)*, 936 F.2d 1496 (7th Cir. 1991)(emphasis added)).

Although *McLaren* focused on a dischargeability action, the Sixth Circuit found that any action dealing with the discharge of debt is an equitable proceeding. This point is driven home by the Ninth Circuit in *Hooper*. The *Hooper* court stated:

Moreover, the genesis of bankruptcy relief was in proceedings brought in English courts of equity. See 1 Norton *Bankruptcy Law and Practice* § 16.02 (1981). Issues surrounding a debtor's discharge and the dischargeability of certain debts are inextricably bound to and arise only in connection with bankruptcy relief because such issues concern whether the debtor will be granted the *protection and benefits of bankruptcy*. See *id.* This close and inextricable tie to the historically equitable bankruptcy process provides a further indication of the equitable roots of dischargeability issues.

In re Hooper, 112 B.R. at 1012.

3. Amended Counterclaim Provides No Right to Jury Trial

The Amended Counterclaim seeks a declaration that the Disputed Interests are not property of the estate. Because the Complaint urges a denial of discharge on the grounds that Debtors failed to disclose the Disputed Interests, it is necessary for this Court to determine if these items and interests are and/or were property of the estate that Debtors were required to disclose. Because the declaratory judgment action in the Amended Counterclaim is intrinsically intertwined with the Complaint, it also is an action in equity. Consequently, the Amended Counterclaim does not give rise to a right to a jury trial.

Arguendo, even if the Amended Counterclaim was not intrinsically intertwined with the Complaint, it would still not give rise to a jury trial. As stated above, courts have uniformly ruled that matters based solely on the Bankruptcy Code do not give rise to jury trials. This is because "bankruptcy itself is equitable in nature and thus bankruptcy proceedings are inherently equitable." *Granfinanciera, S.A.*, 492 U.S. at 37 (citations omitted).

The case *sub judice* requires the Court to determine whether the Disputed Interests are encompassed within the definition of property of the bankruptcy estate, as set forth in § 541 of the Bankruptcy Code. "The Bankruptcy Code clearly confers jurisdiction on the bankruptcy courts to determine property of the bankruptcy estate." *Menninger v. Accredited Home Lenders (In re Morgan)*, – B.R. –, 2007 WL 2119009 (6th Cir. BAP 2007). Since the subject of the Amended Counterclaim is based solely on the Bankruptcy Code, the Amended Counterclaim – which seeks a declaration concerning what constitutes property of the bankruptcy estate – does not give rise to a right to jury trial.

III. CONCLUSION

Buckeye is not entitled to a jury trial on either the Complaint or the Amended Counterclaim because (i) the declaratory judgment action in the Amended Counterclaim does not interfere with a right to a jury trial; (ii) the Complaint is an action seeking to deny debtor a discharge, which does not provide for a right to a jury trial; (iii) an action seeking to determine what is or is not property of the estate does not give rise to a jury trial; (iv) even if, *arguendo*, there was a right to a jury trial on the

Complaint, the parties waived their right to jury trial by not making a timely demand.

IT IS SO ORDERED.

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